IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16203 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASAM RAMJUBHAI CHUHAN & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,1.2.1 - 3, 3.2.1,3.2.2 - 5,5.2.2
MS MAITHILI MEHTA ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 4.
MR YS MANKAD for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

1. Present Special Civil Application has been filed

by the respective petitioners under Article 226 of the Constitution of India for an appropriate writ, direction and/or order holding that the respondent Nos.1 to 4 have no authority or jurisdiction in law to interfere in any manner whatsoever including taking of possession of the premises in question from the petitioners and to declare that the respondent Nos.1 to 4 have no jurisdiction to seek dispossession or eviction of the petitioners. It is also further prayed for a declaration that the petitioners are lawful tenants / leases / licenses of the respondent No.5 – Anjar Municipality and are entitled to continue in occupation and possession and enjoyment of the premises in question subject to such terms & conditions including that of the payment of lease rental / license fee / taxes as may be stipulated by the respondent No.5 – Anjar Municipality.

2. It is the contention on behalf of the respective petitioners that the Anjar Municipality has leased portion of the land near outside the fort

wall of Anjar town and they are the leases. It is submitted that after the devastating earthquake which took place in January – 2001 T.P. Scheme Nos.1 to 4 of Anjar were implemented under the provisions of the T.P. Act including the lands leased by the Anjar Municipality which the Anjar Municipality was in possession pursuant to the notification issued by the Government of Gujarat, Revenue Department, dated 10th November, 1989 and by which the lands in question were vested in the Anjar Municipality subject to the terms & conditions as per the said notification. It is contended in the present Special Civil Application that the Anjar Municipality has preferred Special Civil Application No. 9706 of 2004 against the respondent Nos.1 to 4 restraining the respondent Nos.1 to 4, their agents and servants from taking possession of the open land i.e. the waste land and other public land situated within the territorial limits of Anjar Municipality and also mentioned in the notification annexed at Annexure – C Schedule – I to the said petition

either from the petitioner of the said petition – Anjar Municipality or from the leases or licenses (i.e. inclusive of the petitioners). It is submitted that in the said Special Civil Application No.9706 of 2004 the petitioner preferred Civil Application No. 9714 of 2004 for jointing them as co-petitioners and/or in the alternative to join the petitioners as party respondents, however, as they have independent right in law as lawful leases of the land leased out to the petitioners by the Municipality, they have preferred the present Special Civil Application independently.

3. It is the contention on behalf of the respective petitioners that the Anjar Municipality is constituted under the provisions of Gujarat Municipalities Act; 1963 and is a part of Kutchchh District of Gujarat and though “Kutchchh District” was Class – C city of India till it was merged in Gujarat w.e.f. 1.5.1960. It is further submitted in the petition that the Government of India had extended the provisions

of Bombay Municipal Boroughs Act; 1925 to Kutchchh by notification dated 13th September, 1950. It is submitted that in pursuance of the provision of Bombay Municipal Boroughs Act; 1925 as extended the Kutchchh, the Chief Commissioner of the Kutchchh issued notification of proclamation constituting Anjar Municipality and as per the said notification, territorial limits of Anjar Municipality comprise of whole of town within town wall and area outside the town wall. That the open lands are comprised of waste lands and public lands vested in Anjar Municipality as per the provisions of Section 63 of the Bombay Municipal Borough Act; 1925 as extended to Kutchchh. Thus, according to the petitioners, in accordance with the provisions of sub-section (2) of Section 63 of the aforesaid Act, all the lands not being specially reserved by the State of Gujarat vest and belong to the Municipality. According to the petitioners, in absence of any specific reservation by the State Government qua any of the open land including waste lands and other public lands, all open lands i.e. waste

lands and the other public lands vested in Anjar Municipality as early as in the year 1950. It is further submitted that Kachchh as Class-(C) State remains in existence from 1950 till 1.11.1956 when it was merged in the newly formed bilingual Bombay State under the provisions of States Re-organization Act, 1960 and the Bombay State was bifurcated and as a result Gujarat State came into existence with effect from 1.5.1960 and the Kachchh became one of Districts of the Gujarat State. In the year 1963 the State of Gujarat enacted Gujarat Municipalities Act, 1963 repealing Bombay Municipal Boroughs Act, 1925 as extended to Kachchh area. By Section-279 of the Gujarat Municipalities Act, the Bombay Municipal Borough Act, 1925 as extended to Kachchh area of Gujarat State was repealed providing that notwithstanding the repeal, all the properties vesting in the old municipality shall, from the said date, vest in the new municipalities. It is submitted that Section-80 of the Gujarat Municipalities Act provides vesting of the

property not being specially reserved by the State Government, into Municipality. According to the petitioners, Section-80 is para-materia to Section-63 of the Bombay Municipal Borough Act. It is also further submitted that the State Government issued notification dated 10.11.1989 vesting certain vacant plots of lands within municipal limits of Anjar Municipality as mentioned in Schedule-I of the said notification. By Schedule-II of the aforesaid notification, certain lands were shown as reserved for Government purposes. It is submitted that since the open lands i.e. waste lands and other public lands had already vested in the Anjar Municipality, the aforesaid notification dated 10.11.1989 read with Schedule-I only reasserted vesting of lands in question in Anjar Municipality, however, Schedule-II of the said notification reserving certain lands was cancelled since it amounts to resumption of lands without following the provisions of Section-80 of the Act. Thus, it is the contention on behalf of the petitioners that

the Municipality has become the absolute owner of the open waste ands and other public lands not specially reserved by the State Government i.e. all the lands mentioned in Schedule-I of the aforesaid Notification dated 10.11.1989 and the Municipality has become absolute owner of the aforesaid lands. It is submitted that the petitioner municipality has leased certain lands considering to be the owners of the lands on the basis of the Government Notification dated 10.11.1989 and even prior thereto and now the respondents are likely to disturb the possession. It is the contention on behalf of the respective petitioners that after the devastating earthquake which took place in the year 2001 and on implementation of T.P. Scheme Nos.1 to 4 the waste lands and other lands vested in the Anjar Municipality inclusive of the lands which are leased to the petitioners are part of the T.P. Scheme and the petitioners are likely to be dispossessed and as the Municipality has become the absolute owner, the respondent Nos.1 to 4 have no right and/or

authority to dispossess the petitioners. It is required to be noted that all the submissions and contentions raised in the present Special Civil Application are already dealt with by this Court vide its judgment and order dated 10th July, 2006 passed in Special Civil Application No. 9706 of 2004 and by detail reasoned judgment and order, this Court has dismissed the Special Civil Application No. 9706 of 2004 by holding that the open plots / lands mentioned in Schedule – I to the Government Notification dated 10th November, 1989 are not vested absolutely but they are vested subject to the terms and conditions as mentioned in the Government Notification dated 22.4.1982 and the restrictions imposed thereon. This Court also while dismissing the aforesaid Special Civil Application No. 9706 of 2004 has considered that the plots in question are subject to the T.P. Scheme which has become final and either they are reserved for some public purposes and/or going under 6 mts wide road under the finalized T.P. Scheme. This Court also considered the fact

that before finalization of the T.P. Scheme, the Municipality has never submitted any objection either at the time of draft scheme or preliminary scheme and the Municipality has allowed the T.P. Scheme to become final. Considering the decision of the Full Bench of this Court in case of ***Saiyed Mohammed Abdullamiya Uraizee (since deceased by his successor) and Others V/s. Ahmedabad Municipal Corporation and Others*** reported in **(1977) GLR 549** while dismissing the aforesaid Special Civil Application, this Court also held that on finalization of the T.P. Scheme, the lands absolutely vested in the appropriate authority and once the scheme is finalized, all the rights are determined and such persons who are in occupation of the lands their rights are required to be considered subject to the finalized T.P. Scheme and they can be summarily evicted.

Thus, it appears that the lands upon which the petitioners are claiming some rights as a leases

of Anjar Municipality are within the T.P. Scheme Nos.1 to 4 and the T.P. Scheme has become final and the parties are to be governed by the finalized T.P. Scheme and considering the provisions of Gujarat Town Planning Act, once the T.P. Scheme has become final, all the lands vested in the appropriate authority and the rights of the respective parties are governed by the finalized T.P. Scheme and they can be summarily evicted considering the provisions of Sections 67 and 68 of the Act. It is required to be noted that none of the petitioners have challenged the T.P. Scheme which has become final and the only contention which has been raised in the present Special Civil Application is that they are the leases of the Anjar Municipality and the Anjar Municipality was the absolute owner of the land in question and therefore, the respondent Nos.1 to 4 have no authority to dispossess the petitioners. As stated above, all the contentions and submissions which are raised in the present Special Civil Application are considered by this

Court in Special Civil Application No. 9706 of 2004 and the Special Civil Application at the instance of the Municipality for the very relief which is sought by the petitioners in the present Special Civil Application has been negatived by this Court. It is also required to be noted that in the said Special Civil Application No. 9706 of 2004 a relief was sought directing the State of Gujarat; Secretary, Urban Development & Urban Housing Department; Anjar Area Development Authority; and Collector, Kutchchh not to interfere in any manner whatsoever including taking the possession of the open plots i.e. waste lands and other public lands situated within the territorial limits of Anjar Municipality and also mentioned in Schedule – I to the notification at Annexure – C either from the Municipality or from their leases or licenses and this Court has dismissed the said Special Civil Application. Thus, for the reasons recorded in the decision of Special Civil Application No. 9706 of 2004, the present Special Civil Application is also required to be

dismissed.

4. Even otherwise, it appears that the land occupied by the respective petitioners are included in the T.P. Scheme which has become final under the provisions of the Gujarat Town Planning Act and once the T.P. Scheme is finalized, all the lands vested in the appropriate authority and it also appears that the open lands in which the petitioners are in occupation is either reserved for some public purposes or is going under 6 mts T.P. road and/or is reconstituted. It is also required to be noted that the petitioners have not challenged the T.P. Scheme, which has become final.

5. Under the circumstances and for the reasons stated hereinabove and for the reasons recorded in the judgment and order of this Court dated 10th July, 2006 passed in Special Civil Application No. 9706 of 2004, present Special Civil Application is required to be dismissed

and is accordingly dismissed. Notice discharged. No costs.

[M.R.Shah, J.]

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